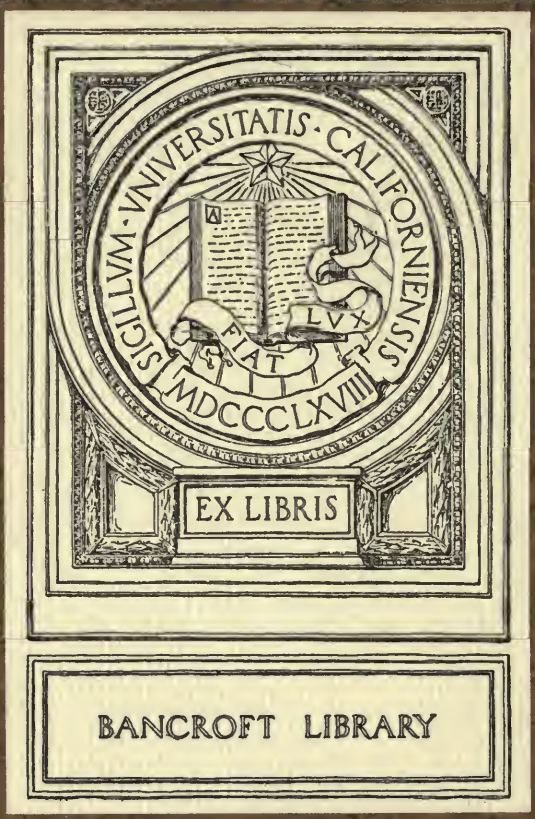
F
1235
.M34


SIGILLVM · VNIVERSITATIS · CALIFORNIENSIS
LVX
FIAT
MDCCCLXVIII
EX LIBRIS
BANCROFT LIBRARY

FOR YOUR LIBRARY
OR
REFERENCE FILES

THE MEXICAN OIL CONTROVERSY

AS TOLD IN DIPLOMATIC CORRESPONDENCE BETWEEN UNITED STATES AND MEXICO

OCTOBER 1920

F 1235
M34

Digitized by the Internet Archive
in 2007 with funding from
Microsoft Corporation

http://www.archive.org/details/mexicanoilcontro00unitrich

6942
Bancroft Library

THE MEXICAN OIL CONTROVERSY

As Told in Diplomatic Correspondence between United States and Mexico

Nowhere can a more authoritative account of the controversy over oil deposits in Mexico be found than in the diplomatic correspondence between the American and Mexican Governments. While a few of the notes have necessarily not yet been made public, the great majority have recently appeared in a report published by the United States Senate. They form a clear and convincing record in which the American Government has at all times taken an unequivocal position for the protection of legitimately acquired rights in entire accord with the usages of international law and practice. The documents, indeed, constitute so complete a story that they call for neither elucidation nor interpretation. Accordingly, they will be left virtually to speak for themselves.

It is commonly thought that the promulgation on May 1, 1917, of the new Mexican constitution marks the beginning of the oil controversy. The record disproves this.

As far back as January 19, 1916, the American Government, being "**reliably informed [that] de facto authorities contemplate issuing a decree providing for the nationalization of petroleum, which, if we are correctly informed, would affect most seriously the interests of numerous American citizens and other foreigners who have heretofore engaged in the business of producing and selling petroleum in Mexico,**"* instructed its representative "**to point out to General Carranza in unequivocal terms the dangerous situation which might result from the issuance of any decree of a confiscatory character.**" The Mexican Government promptly replied on January 21st that it was not "**contemplating such a decree**"; and this assurance was made more emphatic by the unqualified statement of General Carranza on January 26th to the following effect: "**The Government is not contemplating the issuance of a decree nationalizing the petroleum industry.**"

*All citations are taken from documents found in: Investigation of Mexican Affairs; Hearing Before a Sub-Committee of the Committee on Foreign Relations, United States, Sixty-Sixth Congress, Second Session, Part 21.

Shortly afterwards, however, on August 10, 1916, the Mexican Government gave the first concrete evidence of the policy that was to impress all the subsequent acts of the Carranza administration. On that date appeared an order whereby foreign stockholders of new companies were required to waive all right to the diplomatic protection of their governments. Five days later this requirement was extended to aliens acquiring real property in Mexico.

The American Government forthwith protested on August 16th, holding that the alleged waiver "**will not be regarded by the American Government as annulling the relations existing between itself and its citizens who may own stock in such corporations or as extinguishing its obligations to protect them in case of denial of justice.**"

This attitude was reaffirmed on January 19, 1917, on the appearance of the decree of December 15, 1916, which confirmed the previous decree by merely granting an extension for compliance.

There was then sitting at Queretaro a constitutional convention that was to give Mexico a new fundamental law. While the draft submitted to the assembly contained no specific provision nationalizing petroleum, it did include precepts of such a character as to cause the American Government to take action. Accordingly on January 22, 1917, it called the attention of General Carranza to the provision vesting in the Executive, without judicial appeal, the right to determine the amount of land to be owned and operated by civil and commercial companies, characterizing such a proposal, if applied retroactively, as one which "**would apparently result in confiscation of property rights vested under existing laws and treaty stipulations.**" The incorporation into the draft of the purported renunciation of diplomatic recourse brought forth a reiteration of its position that "**the Government of the United States has, in the past, made clear, as doubtless have other nations, that it cannot concede the right of Mexico to limit, by its municipal law, this government's right of intervention to protect the rights of its citizens residing or sojourning in that country, nor concede that waivers such as those referred to in this provision can annul the relations of citizens to their own government and extinguish the obligation of this Government to protect its citizens in Mexico.**" The note closed by earnestly calling the attention of the Mexican Government to the fact that "**the provisions above-mentioned seem to indicate a proposed policy toward foreigners which is fraught with possible grave consequences affecting the commercial and political relations of Mexico with other nations. Further, that the American Government cannot acquiesce in any direct confiscation of foreign-owned properties in Mexico or indirect confiscation.**"

Despite the express assurances of the Mexican Government, the constitution, as finally adopted, contained an article declaring the ownership of petroleum to be vested in the nation.

The American Government immediately sought to obtain assurances from the Mexican Government that in enforcing this constitutional provision American rights would suffer no abridgement.

The first statement was officially given on February 20, 1917,

by the Mexican Minister for Foreign Affairs to Ambassador-Designate Fletcher, who reported the interview to his Government in the following language: "He [Mexican Minister for Foreign Affairs] further said that the legislation emanating from the new constitution, with respect to property rights, would, in his opinion, in no wise prejudice present property rights, and at the same time called attention to article of the new constitution which provides that no laws may be made retroactive." Equally assuring was the following statement made by President Carranza to Ambassador Fletcher on August 2nd, 1917: "In interview with President this morning I informed him that American oil and mining interests were concerned with regard to the attitude of the Mexican Government with reference to the so-called nationalization of these industries. In reply he assured me that they need not be; that it was not the intention of the Mexican Government to take over properties now in exploitation and distinctly stated that there would be no confiscation of these properties."

The Mexican Government, however, issued a series of decrees, beginning with that of February 19, 1918, and culminating in that of August 12, 1918, which in its note of April 4, 1918, the United States characterized as "an attempt of an arbitrary character to separate rights as to surface and subsurface property." These decrees provided for:

I. Payment of rentals and royalties to the Mexican Government on lands and leases.

II. Penalization of failure to file certain statements by throwing lands open to entry by third parties.

III. Limitation of petroleum development exclusively to persons entering into contracts of undisclosed terms.

On the basis of the first of these decrees, the American Government addressed on April 2, 1918, a vigorous note of protest to the Mexican Government. It first dismissed the alleged fiscal aspect of the decree as follows: "While the United States Government is not disposed to request for its citizens exemption from the payment of their ordinary and just share of the burdens of taxation so long as the tax is uniform and not discriminatory in its operation, and can fairly be considered a tax and not a confiscation or unfair imposition, and while the United States Government is not inclined to interpose in behalf of its citizens in case of expropriation of private property for sound reasons of public welfare, and upon just compensation and by legal proceedings before tribunals, allowing fair and equal opportunity to be heard and giving due consideration to American rights, nevertheless, the United States can not acquiesce in any procedure ostensibly or nominally in the form of taxation or the exercise of eminent domain, but really resulting in confiscation of private property and arbitrary deprivation of vested rights." It then defined the issue of the controversy in the following clear terms: "It is, however, to the principle involved in the apparent attempt at separation of surface and subsurface rights under this decree that my Government desires to direct special attention." After declaring that

"the investments of American citizens in the oil properties in Mexico have been made in reliance upon the good faith and justice of the Mexican Government and Mexican laws. . . " it closed with the "formal and solemn protest of the Government of the United States against the violation or infringement of legitimately acquired American property rights involved in the enforcement of the said decree."

In another representation, dated two days later, the American Government, on the occasion of the publication of an authoritative opinion of Sr. Pastor Rouaix as to the terminology of Article 27, held that "The fact that Senor Rouaix is connected with the Mexican Government, and the further fact that the nature of his interpretation is authoritative, seemed clearly to point out the correctness of the view set forth in the telegram of the Department of State dated March 19, noon, No. 895, that the petroleum decree, as promulgated, constitutes an attempt of an arbitrary character to separate rights as to surface and subsurface property, thus taking from owners, without due process of law, their property and with disregard to the provision of the constitution that 'private' property shall not be expropriated except by reason of public utility and by means of indemnification."

New decrees having appeared, and no reply having been received to either communication, the American Government, on August 12, 1918, requested a postponement and suspension of "all operation of said decrees, in order that the American Government may examine carefully and consider their provisions, purpose, and results as affecting rights and properties of American citizens." On August 13, 1918, Ambassador Fletcher reported to his Government an unwillingness on the part of the Mexican Government to postpone operation, coupled with the admission of the correctness of the American Government's position in these words: "He [President Carranza] did not deny that the decrees reached Article 27 in their basic relation and apparently was anxious to stress the point that they were purely fiscal legislation." A more detailed account of this interview is given in the despatch of Ambassador Fletcher of August 14, 1918.

It was not until August 17, 1918, that the Mexican Government made reply to the American note of April 2nd. The answer is a lengthy document which seeks to justify the decree as a purely tax measure, which "embraces all the requisites which science assigns to every impost"; calls upon American citizens to exhaust all remedies in municipal law; and, lastly, denounces the representations of the American Government as an attempt "to place its citizens in a more favored situation than that of Mexicans in their own country."

On December 13, 1918, the American Government instructed Ambassador Fletcher to reply to the above despatch. After noting that "amparo proceedings had been instituted in the courts of Mexico against the recent petroleum decrees," it examined, in detail, the arguments of the Mexican reply. The most important—that alleging that the American Government sought "to place its citizens in a more favored situation"—was rebutted as follows: "The Mexican Government appears to be of the opinion that so long as a State does not discriminate against foreigners and in favor of its own citizens, it is entitled to mete out to foreigners such treatment as it

may desire; that foreigners must submit to their treatment, and that their Governments have no right of interposition to protect them against it, should it be unduly onerous and unjust, until local remedies have been exhausted in vain.

"Applying this view to the petroleum situation, the Mexican Government seems to contend that the decree regulating ownership of mineral deposits is a matter of internal and territorial sovereignty applicable to Mexican citizens and foreigners alike, and therefore that there is afforded no rightful basis for interposition by the Governments of interested foreigners, even though the result of the decree should be, as was apparently its purpose, to deprive such foreigners of property rights which they had legitimately acquired under the laws of Mexico.

"The Government of the United States believes that this contention of the Mexican Government and the basis upon which it seems to rest, find no sound foundation in the principles of the law and practice of nations which in the past have been generally accepted by the Governments of the world, and that it could not, therefore, be fairly called upon to recognize or acquiesce in them in opposition to the usage of nations. The Government of the United States is firmly of the opinion that the great weight of international law and practice supports the view that every nation has certain minimum duties to perform with regard to the treatment of foreigners, irrespective of its duties to its own citizens, and that in default of such performance, it is the right of the foreign Government concerned to enter protest. ...Not the least of such duties, as the Government of the United States believes, is to refrain from measures resulting in confiscation of the vested property rights of foreigners, acquired in good faith and in accordance with the laws of the country in which the property is situated."

On March 18, 1919, the American Government instructed the Ambassador "to protest against attempt apparently contemplated by Circular February 18 to collect royalties from American petroleum interests, and refers generally to objections previously urged by the American Government against Mexican petroleum decrees."

This general protest was made more specific on April 16, 1919, both on the ground of the reported collection of rentals and royalties and on the "denouncement" by third persons of "certain oil properties in Mexico leased by American companies under Mexican laws." The American Government held: "It seems quite clear that in these requirements an attempt is being made by the Mexican Government to coerce American companies into the performance of acts, the results of which would be to admit in advance of the final settlement of the questions at issue the correctness of the contention of the Mexican Government in the matter of ownership of oil deposits, against which the Government of the United States has made solemn protest as threatening confiscation of rights legally acquired by American citizens.

"Therefore, the Government of the United States is constrained to renew the protest previously made against this measure of threat-

ened confiscation and to utter a present protest against the attempted coercion of American interests into an admission of the lawfulness of the means which the Mexican Government has adopted in an attempt to put its confiscatory plan into effect.

"You will add that it would be regarded by the Government of the United States as very unfortunate were the Mexican Government, pending a final solution of its difficulties with the petroleum interests, to complicate the situation by the issuance to third persons of titles to, or rights in, lands legally held by American citizens."

These representations were answered on May 29, 1919, as follows: "The Government of Mexico sincerely deplores the fact that the American companies have ill advisedly failed to comply with the laws which the former issued on the exploitation of petroleum, since they could have done so under protest and with the reservations that they might have considered compatible with their interests, and could have appeared before the proper authorities, requesting a detailed study of the question so that it might be decided in justice and according to law.

"Consequently, if the situation of the petroleum companies is complicated by the denouncements made by third persons, the companies mentioned are doubtless the only ones to blame, since it must be evident to your clear judgment that the protests of a foreign nation can not suspend the effects of the laws issued by the Government of another nation."

This argument was finally disposed of in the sur-rejoinder of the American Government of June 16, 1919, as follows: "When it asserted that the American companies in question could have complied with such legislation under protest and with the reservations that they might have considered compatible with their interests, the foreign office apparently failed to take into account the language used by the Government of Mexico in its reply, understood by the Government of the United States to bear date of August 25, 1918, to the contention of the petroleum companies and interested individuals in the case of the amparos demanded against the recent decrees of the Mexican Government.

"Therein, as a further ground for the contention of the Mexican Government that amparo was not in order, that Government referred to the 'constitutional doctrines' to the effect that when an individual has agreed to be governed as regards his property by a certain statute, he may not later raise the objection that the said statute violates the constitutional precepts. In this connection the reply of the executive branch of the Mexican Government sets forth that some manifestations had been presented 'under protest' but that 'such protest has no legal effect except in the cases precisely specified in the laws.'

"In view of the foregoing the Government of the United States cannot admit that American companies are in any wise blamable for the complication of their situation by reason of denouncements made by third persons, and must reiterate its previous statement that it would regard it as very unfortunate were the Mexican Govern-

ment, pending a final solution of its difficulties with the petroleum interests, to issue to their persons titles to, or rights in, lands legally held by American citizens."

Yet another method was devised by the Mexican Government in its attempt "to coerce American companies into the performance of acts, the results of which would be to admit in advance of the final settlement of the questions at issue the correctness of the contention of the Mexican Government in the matter of the ownership of oil deposits." This consisted in the refusal to grant permits to companies to drill on their own lands.

The first exchanges bear dates of June 22 and June 28, 1917. The Mexican Government admitted that "the prohibition declared is, therefore, but a part of the measures taken covering the constitutional text for the purpose of making the same effective."

Again, on January 23, 1918, the American Government was constrained "to insist that no such action as that be taken." The reply, dated January 27, 1918, gives no satisfaction, holding that "foreign capital shall submit to the new laws by waiving its nationality and organizing as Mexican corporations."

The matter came up again on June 18, 1919, when protest was lodged against the attempt to make the granting of drilling permits conditional upon compliance with recent decrees. The American Government then went on record to the effect "that acquiescence in same would have been equivalent to an admission that the Mexican Government had in issuing them acted within its rights in regard to ownership of oil deposits, against which assumption the Government of the United States has entered a vigorous protest as threatening to confiscate rights which its citizens have legally acquired."

This condition was modified by Circular No. 9, quoted in despatch No. 2241 of August 6, 1919, which placed the granting of drilling permits "on the condition that on requesting the corresponding permission from the Federal Executive they obligate themselves to respect the precepts of the Organic Petroleum Law which the Congress of the Union may enact."

On October 1, 1919, the American Government characterized the refusal to grant drilling permits except on the conditions specified as "but another aspect of the situation affecting petroleum deposits in Mexico, which has been discussed in previous representations from the Government of the United States, and this opportunity is taken to reaffirm the position of this Government with regard to the matter as set forth in such representations."

The note continues: "Moreover, the companies in question can not reasonably be expected to agree in advance to conform to the provisions of a law to be enacted in the future, concerning the terms of which they have no assurance that their rights will be respected.

"In this view of the matter the Government of the United States, owing as it does to its citizens the duty of protecting them in foreign lands, both in their persons and their property rights, must strongly protest against the action of the Mexican Government as

outlined above and characterize it as threatening confiscation and a denial of justice."

Since then it appears that "instructions were sent to the American Embassy in Mexico City, about three weeks ago, to notify the Mexican Government that the United States regarded the operation of the 'denouncement Law' and the Federal Zone Law in the oil fields as an infringement of the rights of Americans under international law."*

And so the record runs—a record for the maintenance of American rights abroad so vigorous and so consistent as to conform in every particular to the best traditions of American diplomacy and the accepted principles of law and justice.

*New York Times, September 8, 1920.

TEXT OF OFFICIAL DOCUMENTS

I.—Representations made prior to the enactment of the constitution as to possible effects of nationalization of petroleum and attempted waiver[1] of diplomatic protection.

II.—Official assurances of Mexican Government that there would be no confiscation.

III.—Representations against petroleum decrees based on Article 27.

IV.—Representations against refusal to grant drilling permits.

I.

Representations made prior to the enactment of the constitution as to possible effects of nationalization of petroleum and attempted waiver of diplomatic protection.

(*Lansing to Silliman*)

Department of State,
Washington, January 19, 1916.

Consul JOHN R. SILLIMAN,
Queretaro, Mexico.

Department reliably informed de facto authorities contemplate issuing a decree providing for the nationalization of petroleum, which, if we are correctly informed, would affect most seriously the interests of numerous American citizens and other foreigners who have heretofore engaged in the business of producing and selling petroleum in Mexico. Point out to Gen. Carranza in unequivocal terms the dangerous situation which might result from the issuance of any decree of a confiscatory character. Request that definitive action be delayed until department shall have had opportunity to examine proposed decree, and mail copy thereof to department.

LANSING.

(*Silliman to Lansing*)

Queretaro, January 21, 1916.

Secretary of State,
Washington.

Department's January 19, 4 P. M. information concerning nationalization of petroleum.

The secretary in charge of the department informed me this afternoon the Government is not contemplating such a decree. On the contrary, he showed me a contract just signed with an American firm for the construction of about 60 kilometers of oil pipe line in the Tuxpam district.

SILLIMAN.

(*Silliman to Lansing*)

Queretaro, Mexico,
January 26, 1916.

Secretary of State,
Washington, D. C.

Department's January 19, 4 P. M., and department's January 22.

Nationalization of petroleum.

In accordance with department's wishes, subject was taken up personally with Gen. Carranza. He informed me this morning: "The Government is not contemplating the issuance of a decree nationalizing the petroleum industry." This confirms statement to me by Subsecretary Rouaix.

SILLIMAN.

(*Telegram, plain.*)

Mexico City, Mexico,
August 10, 1916.

Secretary of State,
Washington, D. C.

Order to notaries provides that in formation new corporations and particularly those for exploration, exploitation of oil lands, charter shall contain clause providing that foreign stockholders renounce their national rights as to company affairs, this meaning they waive all right to protection interest through their national representatives. Informed that this has been tried before, but failed and is not considered to have legal effect. Nevertheless it is undoubtedly dangerous and presumably contrary to treaty rights. Have filed general protest.

RODGERS.

(*Translation.*)

(*Decree Requiring Foreigners to Renounce Their National Protection When Acquiring Rights to Certain Real Property in the Republic of Mexico.*)

A seal reading: "Ministry of state and office of fomento, colonization and industry, Mexico, office of the private Secretary, No. 81."

The first chief of the constitutionalist army in charge of the executive power, considering that as a consequence of our fundamental laws whereby foreigners must enjoy in Mexico the same privileges as the Mexicans, it is natural and legitimate that they should have the same obligations, with a view that the liberality of our democratic institutions should not be understood nor carried to the extreme that foreigners, as owners of property in Mexico, be in better juridical conditions than Mexicans, as it has unfortunately happened and which would occur if they, besides the enjoyment of the rights, actions, and resources offered by the Mexican laws in regard to property and its juridical relations, could formulate claims before their respective Governments; the same first magistrate of the Republic, in view of the extraordinary faculties in him vested, has seen fit to direct the establishment of the following dispositions, obligatory in all the Republic.

First. Foreigners pretending to acquire real estate or national lands, mining claims, waters of Federal jurisdiction, or permit for the exploration or exploitation of the natural riches, as forestal products, oil, fisheries, etc., in the Republic of Mexico, shall present beforehand in writing, before the ministry for foreign affairs, a formal express declaration that in their capacity as proprietors or concessionaries and for all the effects and relations of the property which they desire to acquire, they consider themselves Mexicans, waiving their rights as foreigners and privileges of appeal for protection or claim to their respective Governments.

Foreign corporations can not acquire rights on any of the properties specified in this circular, unless they nationalize and submit to the Mexican laws making the aforementioned declaration.

Second. It is an indispensable requirement for the ministry of fomento, colonization and industry, in order to admit any denouncement or application made by a foreigner on any of the matters referred

to in the previous article, even for a simple permit for exploration, that he should present to it with the first communication a certificate issued by the ministry for foreign affairs, bearing the declaration mentioned in the previous disposition.

Without this requirement the application must be refused emphatically, and all proceedings made before the presentation of this certificate will be null and void.

There shall appear in all property titles, as well as in the permits on the properties aforementioned, which should be granted by the ministry of fomento to foreigners, as well as in the contracts or deeds authorized by public notaries, the full text of the certificate prescribed in the first disposition, besides the reproduction of the text thereof as a special clause. Failure to insert the certificate or that clause will cause the annulment of the title, permit, contract, or respective deed.

Third. In all matters already moved by foreigners which may be before the ministry of fomento or its administrative agencies with relation to any of the properties referred to in this disposition, the proceedings will be suspended and shall not be renewed until the presentation by the interested parties of the certificate in question. If within the period of four months beginning from the date of these dispositions the certificate is not presented by the interested parties they shall be regarded as desisting from their purpose and their applications will be filed, the interested parties not having a right of appeal against this resolution.

The present dispositions are obligatory in all the Republic of Mexico and shall be published in El Diario Oficial, for its knowledge and due compliance, and shall be in force on the day of its issuance.

Constitution and reforms, Mexico, August 15, 1916.

The secretary in charge of the office of fomento, colonization and industry.

PASTOR ROUAIX.

(*Paraphrase. Telegram.*)

Department of State,
Washington, D. C.,
August 16, 1916.

Rodgers,
Special Representative American Government,
Mexico City:

295. The department refers to your telegram No. 278, and instructs you to advise the proper authorities that decree providing that new corporations are obliged to state in their articles of incorporation the clause of renunciation by foreign stockholders of their national rights as to company affairs will not be regarded by the American Government as annulling the relations existing between itself and its citizens who may own stock in such corporations or as extinguishing its obligations to protect them in case of denial of justice.

LANSING.

(*Thurston to Lansing*)

Embassy of the United States of America,
Mexico, January 9, 1917.

The Secretary of State,
Washington, D. C.

Sir: I have the honor to refer to my telegram of January 8 relating to the publication of a further decree relating to the renouncing of citizenship rights by foreigners acquiring certain real properties in the Republic of Mexico, and transmit herewith a copy of said decree, together with a translation of same in duplicate. I also transmit a translated copy of the previous decree upon this same subject, as requested by the department.

I have the honor to be, sir,

Your obedient servant,

WALTER C. THURSTON.
In Charge of American Interests.

(*Translation*)

(*Circular of Decree Requiring Foreigners to Renounce Their National Protection When Acquiring Rights to Real Property In the Republic of Mexico.*)

On the 15th of August of this year, this office, by direction of the first chief of the constitutional army, in charge of the executive power of the nation, issued a circular setting forth the obligatory disposition relating to the requisitions which must be met by foreigners who attempt to acquire, within national territory, uncultivated or national land, waters of Federal jurisdiction, mining claims, or permission for the exploration or exploitation of natural riches, such as forest products, petroleum, fisheries, etc., warning them that they must previously present, through written document and before the department for foreign affairs, a formal, express, and final declaration that, in their capacity of proprietors or concessionaries, and for all effects and purposes relating to the properties they desire to obtain, they consider themselves as Mexicans, renouncing their rights as foreigners, and that of applying for protection or presenting complaints to their respective Governments.

In the third clause of that circular it was declared that all denouncements then filed before this office, or its administrative agencies, upon any of the classes of properties above referred to should be suspended until the interested person should present the certificate mentioned, with the understanding that these denouncements should be placed in the files and considered forfeited unless the certificates were presented before the expiration of four months.

The citizen, first chief of the constitutionalist army, taking into consideration the fact that many foreigners, due to causes beyond their control, have not been able to present said certificate, and he being desirous of preventing harm to those who have acquired in good faith legitimate rights, has seen fit to dispose that the period referred to in said third clause shall be extended four months longer, and will expire April 15, 1917.

December 15, 1916.

EDUARDO HAY.
Subsecretary (Fomento).

(*Lansing to Thurston*)

(*Telegram, plain*)

Department of State,
Washington, D. C., January 19, 1917.

WALTER THURSTON, Esq.,
Representing American Interests, Mexico City.

Advise appropriate authorities that Government of the United States can not regard provisions of decrees of August 15 and December 15, 1916, as annuling the relations existing between it and its citizens who may acquire properties in Mexico or as affecting its rights and obligations to protect them against denials of justice with respect to such properties.

LANSING.

(*Lansing to Parker*)

January 22, 1917.

CHARLES PARKER, Esq.,
Representing American Interests,
Queretaro, Mexico.

The department's attention has been called to certain proposed provisions relating to rights of foreigners in Mexico, which provisions, it appears, the convention in session at Queretaro has decided to incorporate into the Mexican Constitution.

The first paragraph of Article 27, relating to the expropriation of private property, appears to confer on the Executive the power to determine, without any legislative authority and without any judicial recourse being afforded to property owners to protect their rights, the necessity or utility of property, the condemnation of which, to him, may seem advisable. The vesting of such extensive powers in the Executive appears objectionable. It would seem desirable that at least the question as to whether property is taken for a public purpose should always be subject to judicial review.

The seventh paragraph of the same article provides that civil and commercial companies may not own and operate for themselves properties of an area greater than that absolutely necessary for the accomplishment of the purposes of their creation, and that the executive shall in every case determine the appropriate area. The objection to a provision so capable of capricious application appears evident. The precise conditions under which the power vested in the executive may be exercised are not defined. No safeguards are afforded against unwise or arbitrary executive acts. The fact that purchases would seemingly in all cases be subject to executive sanction would alone appear to show the impossibility of any proper practicable application of such a provision. While it is hardly to be supposed that it is intended to give this provision retroactive effect, should this be done such action would apparently result in confiscation of property rights vested under existing laws and treaty stipulations, since no provision is made for compensation for property taken since property would evidently not under such conditions be taken in the proper exercise of the right of expropriation.

Article 28, providing that there shall be no exemption from taxation would apparently, if improperly given a retroactive effect, impair the obligation of contracts of many foreign corporations now operating under agreements, concluded either with the Mexican Federal Government or with the Mexican States, which provide for certain exemptions from taxation for periods that have not yet expired.

By the first and second paragraphs of article 33, it is provided that the executive may expel from the country forthwith and without judicial process any foreigners whose presence he may deem inadvisable, and that there shall be no appeal from his decree. These provisions apparently confer authority on the executive to expel foreigners without regard for the general practice of nations, which confines the exercise of the power of expulsion to cases in which just cause for the exercise of this harsh measure is clearly shown. The express power of the executive to expel, for reasons satisfactory to himself, aliens who have been permitted to enter Mexico, would seemingly place all aliens in that country in a position of insecurity and would appear to be at variance with the apparently growing tendency of nations to restrict the exercise of this right with a view to affording safeguards against the expulsion of aliens in an arbitrary manner inconsistent with the proper protection of their just rights and with a view to the observance of the rules of international comity.

The third paragraph of article 33 provides that foreigners may not acquire real estate unless they shall declare their intention to waive their citizenship and the protection of their governments in all matters appertaining to the property. The Government of the United States has, in the past, made clear, as doubtless have other nations, that it can not concede the right of Mexico to limit, by its municipal law, this Government's right of intervention to protect the rights of its citizens residing or sojourning in that country, nor concede that waivers such as those referred to in this provision can annul the relations of citizens to their own government and extinguish the obligation of this Government to protect its citizens in Mexico. In so far as the proposed provision would hamper the transfer to another foreigner of foreign-owned lands, it would apparently in a sense be confiscatory of rights enjoyed by the foreign owner from the time of his acquisition of the property.

(*Paraphrase*)

You are instructed to bring the foregoing immediately to the attention of Gen. Carranza, and state that the provisions above mentioned seem to indicate a proposed policy toward foreigners which is fraught with possible grave consequences affecting the commercial and political relations of Mexico with other nations. Further, that the American Government cannot acquiesce in any direct confiscation of foreign-owned properties in Mexico or indirect confiscation. You will bring to the attention of Gen. Carranza the department's earnest desire that he give these matters his careful consideration with a view to avoiding the possibility of the disturbance of hitherto pleasant relations existing between the two governments, and with a view to avoiding future serious difficulties under the proposed constitution with any government organized under it.

LANSING.

II.

Official assurances of Mexican Government that there would be no confiscation.

(*Fletcher to Lansing*)

(*Telegram*)

Mexico City, February 20, 1917.

Secretary of State,

Washington, D. C.

Minister for foreign affairs stated that he has no knowledge of any decree affecting rights of foreigners to real estate or mines to which such foreigners already have clear title, but that there are in existence decrees requiring the waiver of nationality in so far as concerns titles now under negotiation or to be acquired in the future. He has promised to send to the embassy copies of such decrees.

He further said that the legislation emanating from the new constitution, with respect to property rights, would, in his opinion, in no wise prejudice present property rights and at the same time called attention to article of the new constitution which provides that no laws may be made retroactive.

FLETCHER.

(*Fletcher to Lansing*)

(*Telegram Received*)

Mexico, August 2, 1917.

Secretary of State,

Washington, D. C.

Confidential. In interview with President this morning I informed him that American oil and mining interests were concerned with regard to the attitude of the Mexican Government with reference to the so-called nationalization of these industries. In reply he assured me that they need not be; that it was not the intention of the Mexican Government to take over properties now in exploitation and distinctly stated that there would be no confiscation of these properties.

FLETCHER.

III.

Representations against petroleum decrees based on Article 27, providing for

(a) Collection of rentals and royalties;
(b) "Denouncements" by third parties;
(c) Issuance of titles under denouncement.

(From American Embassy at Mexico City to Mexican Foreign Office)

April 2, 1918.

Excellency:

The decree of the 19th of February, 1918, which was published in the Diario Oficial on the 27th of February, last, establishing a tax on oil lands and on oil contracts executed prior to the 1st of May, 1917, etc., has been brought to the attention of my Government, and I am under instructions to state to your excellency that my Government has given most careful consideration to the effect which this decree, if carried into operation, will have upon American interests and property rights in Mexico.

The said decree provides for the imposition of certain taxes on the surface of oil lands, as well as on the rents, royalties, and production derived from the exploitation thereof. It is noted also that among the provisions for the collection of such taxes is one requiring that payment in kind shall be delivered to the Mexican Government at the storage stations of the operators. Articles IV, XIII, and XIV of the said decree seem to indicate an intention to separate the ownership of the surface from that of the mineral deposits of the subsurface and to allow the owners of the surface a mere preference in so far as concerns the right to work the subsoil deposits upon compliance with certain conditions which are specified. While the United States Government is not disposed to request for its citizens exemption from the payment of their ordinary and just share of the burdens of taxation so long as the tax is uniform and not discriminatory in its operation, and can fairly be considered a tax and not a confiscation or unfair imposition, and while the United States Government is not inclined to interpose in behalf of its citizens in case of expropriation of private property for sound reasons of public welfare, and upon just compensation and by legal proceedings before tribunals, allowing fair and equal opportunity to be heard and giving due consideration to American rights, nevertheless, the United States can not acquiesce in any procedure ostensibly or nominally in the form of taxation or the exercise of eminent domain, but really resulting in confiscation of private property and arbitrary deprivation of vested rights.

Your excellency will understand that this is not an assertion of any new principle of international law, but merely a reiteration of these recognized principles which my Government is convinced form the basis of international respect and good neighborhood. The seizure or spoliation of property at the mere will of the sovereign and without due legal process fairly and equitably administered, has always been regarded as a denial of justice and as affording internationally a basis of interposition.

My Government is not in a position to state definitely that the operation of the aforementioned decree will, in effect, amount to confiscation of American interests. Nevertheless, it is deemed important that the Government of the United States should state at this time the real apprehension which it entertains as to the possible effect of this decree upon the vested rights of American citizens in oil properties in Mexico. The amount of taxes to be levied by this decree are in themselves a very great burden on the oil industry, and if they are not confiscatory in effect—and as to this my Government reserves opinion—they at least indicate a trend in that direction. It is represented to the State Department that the taxation borne by the oil fields of Mexico very greatly exceeds that imposed on the industry anywhere else in the world. Moreover, it would be possible under the terms of the decree, in view of the fact that the Mexico Government has not storage facilities for the taxes or royalties required to be paid in kind, by storing the same in the tanks of the operators, to monopolize such storage facilities to the point of the practical confiscation thereof until emptied by order of the Mexican Government or by the forced sale of the stored petroleum to the operators at extravagant rates.

It is, however, to the principle involved in the apparent attempt at separation of surface and subsurface rights under this decree, that my Government desires to direct special attention. It would appear that the decree in question is an effort to put into effect as to petroleum lands, paragraph IV of article 27 of the Constitution of May 1st, 1917, by severing at one stroke the ownership of the petroleum deposits from the ownership of the surface, notwithstanding that the Constitution provided that "private property shall not be expropriated except by reason of public utility and by means of indemnification." So far as my Government is aware, no provision has been made by your Excellency's Government for just compensation for such arbitrary divestment of rights nor for the establishment of any tribunal invested with the functions of determining justly and fairly what indemnification is due to American interests. Moreover, there appears not the slightest indication that the separation of mineral rights from surface rights is a matter of public utility upon which the rights of expropriation depends, according to the terms of the Constitution itself. In the absence of the establishment of any procedure looking to the prevention of spoliation of American citizens and in the absence of any assurance, were such procedure established, that it would not uphold in defiance of

international law and justice the arbitrary confiscations of Mexican authorities, it becomes the function of the Government of the United States most earnestly and respectfully to call the attention of the Mexican Government to the necessity which may arise to impel it to protect the property of its citizens in Mexico divested or injuriously affected by the decree above cited.

The investments of American citizens in the oil properties in Mexico have been made in reliance upon the good faith and justice of the Mexican Government and Mexican laws, and my Government cannot believe that the enlightened Government of a neighboring Republic at peace and at a stage in its progress when the development of its resources so greatly depends on its maintaining good faith with investors and operators, whom it has virtually invited to spend their wealth and energy within its borders, will disregard its clear and just obligations towards them.

Acting under instructions, I have the honor to request your excellency to be good enough to lay before His Excellency the President of Mexico, this formal and solemn protest of the Government of the United States against the violation or infringement of legitimately acquired American private property rights involved in the enforcement of the said decree.

Accept, excellency, the renewed assurance of my highest consideration.

HENRY P. FLETCHER.

(*Cable Message from the Department of State to the American Embassy at Mexico City. No. 948. Paraphrase.*)

April 4, 1918.

Sr. Rouaix appears to assert that he placed the draft of article 27 of the Mexican Constitution before the Constitutional Assembly, and he undertakes to interpret authoritatively the expression "dominio directo" which appears in that article as having application to all subsoil deposits, including petroleum. Those words, according to the statement of Sr. Rouaix, mean that the nation possesses all ownership in deposits of this character, both "private" and "absolute and original," and he adds that the Constitution having been promulgated conflicting laws were at once repealed thereby, including naturally those which grant to the owner of the surface the right to deposits under the surface. The fact that Sir Rouaix is connected with the Mexican Government, and the further fact that the nature of his interpretation is authoritative, seemed clearly to point out the correctness of the view set forth in the telegram of the Department of State dated March 19, noon, No. 895, that the petroleum decree, as promulgated, constitutes an attempt of an arbitrary character to separate rights as to surface and subsurface property, thus taking from owners, without due process of law, their property and with disregard to the provision of the Constitution that "private" property shall not be expropriated except by reason of public utility and by means of indemnification.

You will communicate the foregoing to the Mexican Government in a note supplementing the representations you have made in virtue of the instructions given in department's No. 895, and you will make the further statement that if, as would seem to be the case, Sr. Rouaix is the spokesman of the Government of Mexico, this Government, acting on behalf of American citizens who have expended large sums of money in securing petroleum lands in Mexico, and who placed their reliance, as they were justified in doing, on the Mexican laws granting ownership of deposits under the surface to the owners of the surface, protests emphatically and solemnly against the petroleum decree, declaring it to be an act of despoliation and confiscation, and in the premises reserves all rights.

(*Secretary of State to American Embassy*)
(*Paraphrase*)

Department of State,
Washington, D. C., August 12, 1918.

Rush.

American Embassy,
Mexico City.

1357. As immediate action is necessary, you are instructed to seek an interview with President Carranza for the purpose of submitting the following request for extension:

"The American Government has been advised of the results of the conferences that have been taking place between representatives of the Mexican Government and representatives of certain American citizens and corporations whose rights and properties are affected by the following decrees. The decree of February 19, 1918, that of May 18, 1918, published the 21st of May, the decree of July 8, 1918, published the 13th of July, and certain fiscal orders which have reference to the disposition of oil lands and oil contracts and the taxation thereof. It is also advised that two new decrees have been issued by your excellency: That of July 31, 1918, published August 5, which purports to modify or repeal the decrees of February 19, 1918, and May 18, 1918; and the second, date of which is unknown, published on August 10, which purports to modify or repeal the decree of July 8, 1918. The American Government has not had an opportunity to examine the provisions or consider the effect of the last two decrees that are mentioned, for it appears they have only been published within the last two weeks.

As I have not received an answer to my note of April the 2d, I am instructed to draw your excellency's attention to that note and to point out again the concern with which my Government entertains as to the possible effect of these various decrees upon the vested rights in Mexico of American citizens in oil properties. And to further direct your excellency's attention to the necessity which may arise, in order to protect the property of its citizens in Mexico, divested or injuriously affected by the said decrees, to impel the United States to protect the property of its citizens.

It is understood by my Government that the date upon which these decrees will go into effect is August 15, 1918, and I am therefore instructed to request your excellency to postpone that date and suspend all operation of said decrees in order that the American Government may examine carefully and consider their provisions, purpose and results as affecting rights and properties of American citizens.

Telegraph results.

LANSING.

(*Fletcher to Lansing*)
(*Paraphrase, Telegram*)

Mexico, August 13, 1918.

Secretary of State,
Washington.

Rush. 1382, August 13, 1918.

I presented in writing the request contained in your telegram 1357, August 12, to the President at

an interview this afternoon. In reply he stated that it was impossible to postpone operation of the petroleum decrees further. In the fundamental question involved, i. e., the conflicting rights of the Government and private individuals to the subsoil products, he explained that the decrees were fiscal legislation merely, to pass laws that would give effect to article 27 of the Constitution and to legislate as to the above question was the province of Congress. He stated that if the difficulty could not be settled except by war or intervention he was sorry, but was prepared to confront this alternative. Apparently he did not like the reference in the last communication and in my note of April 2 to the possibility of the United States Government having to protect the property of its citizens. In reply I stated that I believed and hoped that matters would not come to such a pass. He agreed and stated that the interested parties should appeal to the courts and that if and after legal remedies should fail there still remained the diplomatic channel.

In the event the American citizens concerned should feel that their legally acquired rights should not have received due recognition in the Mexican courts resort might further be had to arbitration or other peaceful means to decide the question at issue and referred to existing treaties between our two countries, and I informed him that I thought it would have a reassuring effect if I could inform the department of the above. The President replied that he would be willing to exhaust every peaceful means of settlement before resorting to force. He stated that the Mexican Government could not admit any interference in respect to the present matter, as it was purely fiscal, and he so informed the British Government. He did not deny that the decrees reached article 27 in their basic relation and apparently was anxious to stress the point that they were purely fiscal legislation.

He believed that companies should file their manifestations under protest if they so wished and without prejudice, he stated.

I again expressed my confidence that the question could and would be settled peaceably and satisfactorily, and he replied in the same spirit.

FLETCHER.

(*Fletcher to Lansing*)

Embassy of the United States of America,
Mexico, August 14, 1918.

No. 1312.

The Secretary of State,
Washington.

Sir: Continuing my dispatch No. 1283 of August 7, 1918, on the subject of the petroleum decrees recently issued by the Mexican Government, and confirming my recent telegrams, I have the honor to report the developments of the situation in the past weeks, as follows:

On August 13 the foreign office made public its reply to the note of the British Government dated April 30. The substance of this reply was telegraphed immediately to the department and the text and translation will be found in my dispatch No. 1306 of August 14.

Your telegram No. 1237 of August 12, 3 p. m., instructing me to seek an immediate interview with President Carranza and request a further postponement of the operation of the recent petroleum decrees, reached me yesterday morning.

I put this request in writing—copy inclosed—of which I also made a translation and arranged for an interview with President Carranza at 6 o'clock yesterday afternoon. The interview lasted half an hour and the principal points and results thereof were immediately telegraphed to the department.

On opening the conversation, I explained to the president, that while the attorneys representing the various American citizens interested in the oil industry in Mexico had reported the result of their conferences with the representatives of the Mexican Government, to their principals and more recently to the Department of State, nevertheless, my Government had not had sufficient time to study the various decrees and to determine the effect which they would have upon American interests and property rights in Mexico, and that I had been instructed to present to him a request for postponement of the operation of the said decrees and handed to him the note above referred to in translation. The president read it carefully and replied that as a result of the conferences held between Messrs. Garfield and Rhoades and Messrs. Pani and Nieto, the Mexican Government had made a number of modifications in the petroleum decrees favorable to the companies concerned; that the decrees were merely fiscal; that it was the province of the Congress, which would meet on the 1st of September, to pass the laws which would put article 27 into effect, and that he believed such legislation—which would originate with him or with some member of Congress—would be one of the first subjects to be taken up by the legislature; that he had gone as far as he could in the matter, and could not further postpone the operation of the petroleum decrees.

He referred with evident displeasure to the part of the request which mentioned the necessity which may arise to impel the United States to protect the property of its citizens in Mexico and said that this was merely fiscal legislation, and, as he had pointed out in his reply to the British Government, Mexico in the exercise of its sovereign rights could not admit interference of foreign Governments in the matter, and said that if this meant war or intervention he was prepared to confront this alternative however regrettable. I replied that I saw no immediate danger of matters coming to such a pass and referred to the peaceful means which, in my opinion, should and would be exhausted before this alternative need be met. He agreed in this and said that the parties interested should appeal to the courts, and that if and after the ordinary legal remedies should have been exhausted they still should feel aggrieved, there remained always the diplomatic channel through which to attempt settlement. Following that line of thought, I told him that I believed it would have a reassuring effect if I could say this to the department, and that every legal and peaceful means would be exhausted to reach a settlement of the judicial question involved, and I referred to the existing treaties between Mexico and the United States in this connection. The President replied that he was not a partisan of force, and stated his willingness to adopt peaceful means of settlement.

Throughout the conversation the President stressed the point that the decrees in question constitute merely fiscal legislation, and that he had not attempted in the decrees to put into practice and effect the provisions of the Constitution relating to subsoil ownership, and that the congress only had this power and would decide the conflict with reference to subsoil ownership as between the nation and private individuals. I made it clear, however,

that in my opinion the decrees were based on Article XXVII of the Constitution, and that individual owners feared that compliance with the provisions of the said decrees might prejudice their legitimately acquired rights. He then spoke of the filing of manifestations and stated that in his opinion they should be filed; that they could be filed under protest if the companies so desired and without prejudice to their rights.

In conclusion I referred to the delicacy of the situation and to the very short time which would elapse before the decrees were put into effect, and expressed the hope that no precipitate action would be taken by the Mexican Government which would interfere with the peaceful, orderly, and judicial settlement of the matter in dispute, and my personal hope and belief that with patience and good will on both sides a satisfactory settlement would be reached. The President replied in the same spirit. The interview was extremely cordial throughout. The only way in which the President showed the slightest annoyance was in connection with what he considered a threat of the United States Government to protect its citizens in Mexico.

This morning there was published in all the local papers a new petroleum decree dated the 12th, providing that petroleum lands now under exploitation or acquired after survey would not be open to denouncement after the 15th instant, even though not manifested as prescribed by the petroleum decrees, and that such nonmanifested lands would pay an annual rental of 5 pesos per hectare and a royalty of 5 per cent. on production.

I am informed that this new decree was prepared last night in the palace and antedated. I telegraphed this morning a translation of this last decree in full —in view of the fact that there remain only two days in which manifestations may be filed—to have the complete text.

Up to the present very few of the companies and individuals interested have filed the manifestations called for by the decree.

I might add that in the course of my interview with the President yesterday, he said that he was preparing a reply to my note of April 2, more or less along the lines of his reply to the British Government.

I have the honor to be, sir,
Your obedient servant,

HENRY P. FLETCHER.

(*Inclosure No.* 1, *Dispatch No.* 1337)

(E. Garza Perez, Sub-secretary, by Reason of Illness of the Secretary of State for Foreign Affairs, to Henry P. Fletcher, American Ambassador, Mexico City.)

(*Translation*)

2772. Mexico, August 17, 1918.

By direction and under instructions from the President of the Republic, I have the honor to reply to note No. 290 which your excellency addressed to the Government of the Republic under date of April 2, this year, with regard to the decree of February 19, which established taxes on petroleum lands and petroleum contracts as well as to that addressed to the said high official on the 13th of August, last. In the first note your excellency presents through me to the President of the Republic a formal and solemn protest of the Government of the United States against the violation of private property rights legitimately acquired by American citizens, which it is considered the application of the decree mentioned will bring with it.

I must not conceal from your excellency the fact that it has been a matter of surprise for the Mexican Government to receive a diplomatic representation with reference to an act proceeding from the legitimate exercise of its sovereignity, such as the issuance of a decree, and that the said representation contained the proposition of affording undue protection to foreign citizens and interests, and which, if made good, would have the effect of placing them in a better and more privileged situation than Mexicans themselves.

Your excellency will understand that neither the one nor the other can be consented to by a government or a people conscious of its dignity and high duty of preserving unblemished the national sovereignty.

Of the principal questions covered by your excellency's note referred to one relates to the tax created by the decree on oil lands and contracts and another to the system of real property contained in article 27 of the political constitution of the Republic.

Now, in as much as the right of decreeing taxes is an attribute of internal sovereignty and the organization of property in the country is an attribute of territorial sovereignty, neither of the two questions can be made the basis of diplomatic representation, and less still of a formal and solemn protest such as that which your excellency makes in the name of and under instructions from your Government, as both of these things imply a real diplomatic intervention in the internal affairs of Mexico. The Mexican Government has not recognized and will not recognize that any country has the right to interfere in any form in its internal affairs nor even of protesting against acts exclusively within the exercise of its sovereignty.

The tax has been established by a general law which affects Mexicans and foreigners and is applicable in any section of the country where a petroleum deposit may exist or may be discovered. Nevertheless, your excellency announces that the Government of the United States might be obliged to protect the interests of its citizens from the application of said law; and while the character of this protection is not stated, it undoubtedly tends to place foreigners in Mexico in a privileged position, which your excellency will understand is contrary to every rule of right and wounds the dignity of the Mexican people.

The protection of national and foreign interests within the country is a duty and at the same time a faculty of the Mexican Government exclusively. By announcing protection by your excellency's Government, if necessity arises, the idea is clearly revealed of obtaining undue preference in favor of American interests and citizens, this fact being made more evident still when it is considered that Mexican companies and proprietors have made no move to escape the tax and that their recourse in case they believe it to be excessive, is to appeal to the courts of the Republic demanding protection and amparo, and this is the only means which foreigners also should adopt.

The Mexican Government can not consent to any measure whatsoever which the American Government may purpose to put into practice to place its citizens in a more favored situation than that of Mexicans in their own country, and in so doing is sure of the unanimous support of public opinion and of the nation in indorsing respect for its sovereignty.

The criterion of the Mexican Government in this matter is not an innovation in international law, but the simple application of the principle of the equality of nations, frequently forgotten by strong governments in their relations with weak countries. It is furthermore a principle which the President desires to see implanted and respected in the diplomatic, mercantile, and all other relations which may be established between countries, and which he himself has proclaimed on repeated occasions, in the following terms:

"No individual should aspire to a better situation than that of the citizens of the country to which he goes; legislation should be general and abstain from distinctions on account of nationality. Neither the power of nations nor their diplomacy should serve for the protection of particular interests or to exert pressure upon the governments of weak peoples with the end of obtaining modifications of laws which are disagreeable to the subjects of a powerful country."

In fiscal matters, this amounts to a declaration of perfect equality of nationals and foreigners in the collection of taxes decreed by the public power of a country.

The protection which Your Excellency states the Government of the United States may find itself in the necessity of extending to its nationals and which is ratified in the note of August 13, constitutes a threat which is in contrast with the pacific ideals of His Excellency President Wilson and does not concord with the reiterated manifestations of friendship and respect which he has proclaimed in regard to Mexico.

Whatever may be the intention of the American Government in this respect, the Mexican Government believes it necessary to state that it will not accept the interference of any foreign power in the arrangement of its internal affairs and that it will not admit any proceeding which under the pretext of protection to foreign interests wounds the national decorum or impairs the exercise of its sovereignty.

The issuance of the decree of February 19 is an act which of itself can not form the basis of diplomatic representations. If your excellency's Government does so it is because it believes the said decree deprives American citizens of acquired rights and the seizure or spoliation of these rights by the mere will of the sovereign without due process of law has always been held as a denial of justice and sufficient cause for diplomatic representations.

Your excellency states that this seizure or spoliation arises from the separation which our law makes between the surface and subsoil rights, which amounts to a denial of justice.

A denial of justice consists in that a judge refuses to impart justice when it is asked of him, or that any authority does not, either from negligence or a voluntary negative, pronounce its decision. In general language, a denial of justice is every negative to accord to a person that which is his due.

The Mexican Government has no knowledge up to the present that either American citizens or anyone else who believe themselves prejudiced by the decree, have resorted to ordinary legal methods or to the appropriate authorities, for relief against the petroleum tax, since the discussions to which your excellency's second note refers were of a private character.

The petroleum tax embraces all the requisites which science assigns to every impost, but if it be considered that its application is unjust or the amount excessive, our laws assure the means of defense and our tribunals are prompt to decide as to the application of said laws. There is an individual guaranty established in article 22 of our political Constitution which prohibits the confiscation of property, and this is equally afforded by article 17 of the same fundamental code, which provides that the courts shall be open for the administration of justice at such times and under such conditions as the law may determine. Nevertheless, the American interests which your excellency represents and defends have not resorted to the established legal remedies in order that the proper authority should decide with regard to the injuries and confiscations which they believe themselves to have suffered; and yet your excellency bases the diplomatic representation made in the name of your Government on a "denial of justice," which really has not taken place.

The seizure or spoilation of property by the mere will of the sovereign is exactly one of the things which our Constitution prohibits and condemns in article 14. If such cases of spoilation or confiscation should be proven and our tribunals should deny judgment, or having pronounced judgment favorable to the complainant, the Mexican Government should refuse to respect the judgment, then there would be a denial of justice and reason for diplomatic representations. In the case which gave rise to your excellency's note, the courts have not yet intervened, and the expression "denial of justice," which is used as a basis for the representation, must have been taken in a sense distinct from that commonly assigned to it in international law.

The American doctrine in this respect is conclusive. It defines and considers the tax as a necessary attribute of sovereignty and teaches that as long as the impost is uniform in its execution and can be considered as an impost and not as a confiscation or arbitrary imposition, no representation may be made to a foreign government in aid of the foreigners who may be affected, inasmuch as the only safeguard against the abuse of the power of levying taxes is found in the structure of the Government itself, and reclamations or complaints on account of an excessive tax are properly questions within the competency of the local tribunals.

As a matter of fact, the tribunals alone are capable of passing judgment upon the equality of distribution of the tax and the other requisites, and it is not just that the very foreigners who are affected should judge and decide such questions. Otherwise it would be sufficient, in order to escape from a legitimately decreed impost, to allege the pretext that it is confiscatory. Furthermore, it is customary in all countries that diplomatic action should be the last to be exercised and that only after ordinary means have been exhausted.

Your excellency affirms that investments of American citizens have been effected under the guaranty of the good faith of the Mexican Government, which virtually has invited them to make such investments; and that it can not believe that now this Government will disregard its obligations, now that the country finds itself at peace and at a stage of progress.

Your excellency has interpreted faithfully in this part of your note the disposition of the Mexican Government with respect to foreign investments; since its conduct and intentions have been and will be in the future, the conciliation of foreign interests with the progress of the Republic and its legitimate rights, by means of a perfect equality before the law of Mexicans and foreigners.

Assuredly American interests are worthy of every protection and the Mexican Government recognizes that they may contribute to the industrial development of the Republic, particularly in the petroleum industry, and in precisely this spirit has the decree of February 19 been issued (aside from the funda-

mental question which consists in putting into practice the dominion of the Nation over the subsoil) because, respecting the existing situation, it impedes and prevents speculations in petroleum lands prejudicial to the operators and to the interests of the country.

With reference to the request which, on instructions from your Government, your excellency makes in the second note, to the effect that the petroleum decrees referred to be not made effective on August 15, the matter need not be specially considered, inasmuch as the time for making and the form of manifestations provided for by the said decree had been modified previously to its presentation.

The Mexican Government desires to live in peace and friendship with all nations and in good harmony with your excellency's Government. In order to accomplish this, it will endeavor to respect the dignity and the interests of foreigners and has no idea of passing legislation designed to molest a friendly country or its citizens. These may, with all confidence, continue to rely upon the laws and institutions of the Republic.

The Mexican Government hopes it has dissipated with these explanations, all ground for misunderstanding between two friendly peoples and all apprehension or fear on account of American interests invested in Mexico; and relying upon the profound knowledge which your excellency personally has of existing conditions, is certain your excellency will make plain to the Department of State the true object of the fiscal dispositions which brought forth your note, and the Mexican Government's reason for maintaining the perfect equality of nationals and foreigners before the law.

I renew to your excellency the assurances of my highest consideration.

By reason of illness of the secretary, the subsecretary:

E. Garza Perez.

No. 799. December 13, 1918.

The Hon. Henry P. Fletcher,

American Ambassador, Mexico City.

Sir: The department acknowledges the receipt of your No. 1337, of August 21, 1918, with which you inclosed copy of a translation of note No. 2772, of August 17, 1918, from the foreign office, replying to your embassy's note of April 12, 1918, protesting against the so-called petrolum decree of February 19, 1918.

You state that amparo proceedings have been instituted in the courts of Mexico against the recent petroleum decrees; that you have been informed by a representative of the American oil companies that the proceedings are progressing satisfactorily, and that there is hope of obtaining what would amount to a preliminary injunction in our procedure, and that the issuance of the decree of August 12, 1918, has relieved the situation and removed the danger of arbitrary action against the companies by the Mexican Government.

You further stated that a new Congress would convene on the 1st of September, and that it would not be surprising if an entirely new petroleum law were proposed by the Government almost immediately: that should the decision of the courts uphold the contention of the Mexican and foreign companies and citizens as against the Government, the troublesome question of enforcing retroactively article 27 of the Constitution would be removed and the way would be open for the Mexican Government to proceed along more moderate and more just lines with the so-called nationalization of petroleum producing lands.

You added that at any rate an acute crisis in the petroleum matter had been avoided and that the indications were that this difficulty, which seriously threatened the good relations between Mexico and the United States, would be adjusted by peaceful and legal methods.

The department is pleased to learn of the improvement in the situation, which seems to render unnecessary at the present time further representations in the way of protest to the Mexican Government.

However, the department deems it advisable at this time to take notice of certain statements contained in the note of the foreign office copied with your dispatch, both because silence on the part of this Government with respect to some of these statements might lead the Mexican Government to suppose, contrary to the fact, that this Government was disposed to acquiesce therein, and also since it seems entirely possible that the Mexican Government is still bent upon putting into effect by Executive decree, or by legislation, the confiscatory features with respect to oil-bearing lands, of article 27 of the constitution and the petroleum decree of February 19, 1918.

Therefore, you will please take suitable occasion to reply to the Mexican note of August 17, 1918, substantially as follows:

The Government of the United States has noted with pleasure that, as anticipated by it, the Mexican Government has the intention to conciliate foreign interests and that it regards American interests as worthy of every protection, recognizing that they contribute to the industrial development of the Republic of Mexico, particularly in the petroleum industry. The Government of the United States heartily reciprocates the expressed desire of the Mexican Government that the two nations live in peace, friendship, and good relation, and welcomes the statements that the Mexican Government will respect the dignity and the interest of foreigners and has no idea of enacting legislation designed to molest a friendly country or its citizens.

With these views animating the Mexican Government and their hearty reciprocation by the Government of the United States, it would seem that there should be no difficulty in adjusting in an amicable fashion any matters of difference between the two Governments.

The Government of the United States is not unappreciative of the disposition of the Mexican Government to translate on its part these friendly sentiments into action by the issuance of the decree of August 12, 1918, which tends to remove the danger, theretofore feared by the United States, of arbitrary proceedings against foreign oil interests, and the Government of the United States is encouraged by this action to believe that the entire petroleum question, as it affects American interests, will at a not distant date reach an adjustment equitable to all parties concerned.

While the present situation with respect to the matters which have been in difference between the Mexican Government and the petroleum interests, as the Government of the United States understands the matter, is in an orderly process of developing itself, with a strong possibility that the outcome will be a satisfactory adjustment between the interested parties, the Government of the United States consid-

ers that it would be appropriate for it to state briefly at this time, with the object of clarifying the situation and of avoiding all possibility of misunderstanding, its views with regard to certain allusions and statements contained in the note of the Mexican foreign office, No. 2772, of August 17, 1918.

The Government of the United States regrets to observe the critical attitude which the Mexican Government has assumed toward the efforts made by this Government through diplomacy to protect its citizens in Mexico from what appeared to it to be imminent spoliation of their vested rights in Mexico, and cannot but believe that this attitude is based on a partial understanding of the causes and grounds leading this Government to express its views in its note to the Mexican Government of April 2, 1918. In justice to itself, the United States feels that it is entitled to point out that its diplomatic interposition in this case was consequent upon and flowed directly from the policies and actions of the Mexican Government itself, notwithstanding the unremitting efforts of the United States to explain informally the dire effects of these measures upon American interests in the petroleum fields. Moreover, the representations which the Government of the United States had made with respect to the Mexican petroleum decree of February 19, 1918, were not in any way inspired, as the Mexican Government appears to suppose, by the desire to obtain undue protection to American citizens and American interests, but solely to obtain for them that protection to which they seem to be entitled under the generally accepted rules and principles of international law.

The purpose of the Government of the United States was to call the attention of the Government of Mexico, with such earnestness as the critical situation of American interests seemed to demand, to what seemed to the Government of the United States an unwarranted course of action, against which ordinary legal proceedings might fail to provide a sufficient and timely remedy, with the confident belief that upon consideration of the views of this Government, the Mexican Government would appreciate the condition in which such American citizens would be placed by the action apparently contemplated against them and that the Mexican Government would, therefore, take such prompt steps as would relieve the condition and render unnecessary any further controversy over the matter. The Mexican Government's mistaken views of the attitude of the Government of the United States in these respects is believed to have been brought about by the conception which the Mexican Government asserts it has of the duties and obligations of a State to foreigners in its country. The Mexican Government appears to be of the opinion that so long as a State does not discriminate against foreigners and in favor of its own citizens, it is entitled to mete out to foreigners such treatment as it may desire; that foreigners must submit to their treatment, and that their Governments have no right of interposition to protect them against it, should in be unduly onerous and unjust, until local remedies have been exhausted in vain.

Applying this view to the petroleum situation the Mexican Government seems to contend that the decree regulating ownership of mineral deposits is a matter of internal and territorial sovereignty applicable to Mexican citizens and foreigners alike and therefore that there is afforded no rightful basis for interposition by the Governments of interested foreigners, even though the result of the decree should be, as was apparently its purpose, to deprive such foreigners of property rights which they had legitimately acquired under the laws of Mexico.

The Government of the United States believes that this contention of the Mexican Government and the basis upon which it seems to rest find no sound foundation in the principles of the law and practice of nations which in the past have been generally accepted by the Governments of the world, and that it could not, therefore, be fairly called upon to recognize or acquiesce in them in opposition to the usage of nations. The Government of the United States is firmly of the opinion that the great weight of international law and practice supports the view that every nation has certain minimum duties to perform with regard to the treatment of foreigners, irrespective of its duties to its own citizens, and that in default of such performance, it is the right of the foreign Government concerned to enter protest. Not the least of such duties, as the Government of the United States believes, is to refrain from measures resulting in confiscation of the vested property rights of foreigners, acquired in good faith and in accordance with the laws of the country in which the property is situated. While the Mexican Government may see fit to confiscate vested property rights of its own citizens, such action is in equity no justification for the confiscation of such rights of American citizens and does not estop the Government of the United States from protesting on behalf of its citizens against confiscation of their property.

To resist unjust encroachment upon their rights by the governmental agencies of their country, Mexican citizens are armed with a weapon which they may presumably use in addition to judicial remedies. I refer to the orderly processes by which the free people of a democracy may assert their will in respect of governmental policies. But Americans in Mexico have no such recourse. Aside from judicial remedies, they are limited to an appeal for the protection of their Governments. If they are to be denied that right of appeal they are clearly placed in a position of disadvantage as compared with citizens in Mexico who have both political and legal remedies at their command to right their wrongs. If the right of protection of this Government is to be denied, then one of the means of obtaining that parity of treatment to which the Mexican Government admits Americans are entitled is plainly destroyed.

The United States is ready to admit that legal remedies should as a rule be tried by its citizens to obtain reparation for or relief from wrongful actions against their property, and it is understood that the American interests affected by the petroleum decree are resorting to such remedies, but the United States cannot admit that diplomatic representations is always premature if made on behalf of its citizens before they have exhausted their legal remedies in the courts of Mexico.

If it were necessary to substantiate this proposition, many instancse of diplomatic action, before or during legal proceedings, might be cited from the practice of nations, in case of irreparable damage or highly arbitrary action, particularly where it is in the power of the Government to prevent or suspend either. The promulgation of the before-mentioned provision of article 27 of the Mexican Constitution, followed by the issuance of the so-called petroleum decrees indicated a settled purpose of the Mexican Government to put into execution this provision of the Constitution, without opportunity for full and fair consideration, and without regard to the legitimately acquired rights of American citizens. Such acton might have been irreparable in its results, and certainly would have been arbitrary, and within the power of the Mexican Government to prevent or modify as subsequent events have shown. In the circumstances, friendly representations, without pre-

judice to the prosecution of legal remedies and in the interest of avoiding misunderstanding, can hardly be said to be out of place. On the contrary, the Government of the United States believes that happy results are often the outcome of diplomatic interposition, which therefore serves the best of ends, in the way of averting possible difficulties of a serious nature. Moreover, the argument of the Mexican Government as to the necessity of a resort to its courts by foreigners affected by the decree in question, prior to diplomatic interposition, would have more weight did the decree relate alone to matters of taxation, which is far from being the case, although a casual reading of the note under acknowledgment might lead to that conclusion.

As a matter of fact, the immensely important feature of the decree is the attempt made therein to carry out the provisions of article 27 of the Constitution for the confiscation of the petroleum-bearing subsoil, and this was thoroughly brought out by the embassy's note of April 2, 1918, in which it was said, with reference to the taxation feature of the decree, that the Government of the United States reserved opinion on the question as to whether such taxation was confiscatory in effect. Furthermore, in mitigation of what this Government regards as the plainly confiscatory feature of the decree, the note under acknowledgment makes reference to the guaranty established by article 22 of the Constitution. This Government is at a loss to understand this reference to article 22 as it would not seem to modify the effect of the decree in question, since the confiscation forbidden by that article of the Constitution appears to relate to punishment for criminal offenses. This cannot, therefore, be regarded as modifying the provision of the Mexican Constitution clearly applicable to this case, namely the following clause of article 27:

"Private property shall not be expropriated except for reasons of public utility and by means of indemnification."

Indeed, this provision seems to contemplate the establishment of judicial procedure for the expropriation of private property.

Therefore, the Government of the United States finds itself quite unable to accept the point of view of the Mexican Government, in respect to parity of treatment of Americans and Mexicans, and to diplomatic interposition in behalf of the former.

This communication should not be concluded without reference to the statement in the note under acknowledgment as to the inconsistency which the Mexican Government indicates that it finds between the action of the Government of the United States in respect to the petroleum controversy, and the utterances and ideals of the President of the United States. Regarding this it may be said that it is believed that the Mexican Government will confess itself unable to find any statement of President Wilson, which by expression or implication, pronounce against the exercise of the right of diplomatic interposition, upon suitable occasion therefore. The President has drawn a sharp contrast between the policy of armed intervention and that of diplomatic interposition. He has, on numerous occasions, stated in effect that he would not countenance armed intervention in the affairs of another State for the purpose of gratifying selfish interests, and the composite statement as presented by the Mexican minister of foreign affairs clearly comprehends such a situation. But the President has never stated that he would forego the right of diplomatic interposition in behalf of American citizens, a distinctly friendly method of supporting legitimate national interests in order to avoid injustice. On the contrary, the President had declared for diplomatic interposition no where better than in the following quotation from his address of January 29, 1916:

"America has not only to assert her right to her own life within her own borders; she has also to assert her right to equal and just treatment of her citizens wherever they go."

The Government of the United States asks no more than "equal and just treatment" for its citizens, and therefore cherishes the sincere hope that the Mexican tribunals whose prerogative it may be to pass upon the legal questions involved in the so-called petroleum decree will in the proceedings which it is understood have been initiated and which may hereafter be commenced protect the legitimately acquired rights of American citizens. Thus the controversy may happily be ended. However, should this hope unfortunately be disappointed, the Government of the United States must reserve to itself the consideration of the question of interesting itself further on behalf of American citizens concerned in this important and serious matter.

I am, sir,

Your most obedient servant,

FRANK L. POLK.

(*Paraphrase—Telegram*)

March 18, 1919.

American Embassy,
Mexico.

1921. Your dispatch 1842, February 25.

The department instructs the ambassador to protest against attempt apparently contemplated by circular February 18 to collect royalties from American petroleum interests and refers generally to objections previously urged by the American Government against Mexican petroleum decrees.

POLK, *Acting.*

(*Polk to Fletcher*)

Department of State,
Washington, April 16, 1919.

American Embassy,
Mexico City.

Inform foreign office substantially as follows:

The attention of the Government of the United States has been called to the fact that certain oil properties in Mexico leased by American companies under Mexican law have recently been denounced by third persons; that American lessees have protested to the department of industry, commerce, and labor against such denouncements and petitioned that no titles or concessions covering the properties in question should issue in consequence thereof; and that in at least one case said department has required the leasing company to submit evidence of payment of rental and royalties to the Mexican Government and to couch its protest in the terms stipulated by the decree of August 8, 1919.

It seems quite clear that in these requirements an attempt is being made by the Mexican Government to coerce American companies into the performance of acts, the results of which would be to admit in advance of the final settlement of the questions at issue the correctness of the contention of the Mexican Government in the matter of ownership of oil deposits, against which the Government of the United States has made solemn protest as threatening con-

fiscation of rights legally acquired by American citizens.

Therefore, the Government of the United States is constrained to renew the protest previously made against this measure of threatened confiscation and to utter a present protest against the attempted coercion of American interests into an admission of the lawfulness of the means which the Mexican Government has adopted in an attempt to put its confiscatory plan into effect.

You will add that it would be regarded by the Government of the United States as very unfortunate were the Mexican Government, pending a final solution of its difficulties with the petroleum interests, to complicate the situation by the issuance to third persons of titles to or rights in lands legally held by American citizens.

POLK, *Acting.*

(*Paraphrase*)

Department of State,
Washington, April 16, 1919.

American Embassy,
Mexico City.

1969. The ambassador is instructed to renew the protest of the Government of the United States previously made against the measure of threatened confiscation and to further protest against the attempted coercion of American interests into an admission of the lawfulness of the means which the Mexican Government has adopted in an attempt to put into effect its confiscatory plan.

The ambassador is further instructed to add that a complication of the situation by the issuance to third persons of titles to or rights in lands legally held by American citizens, would be regarded by the American Government as very unfortunate.

Specific reference is made to the fact that certain oil properties in Mexico leased by American companies under Mexican law have recently been denounced by third persons; that protest has been made by the American lessees to the department of industry, commerce, and labor against such denouncements and petitioned that no titles or concessions covering the properties in question should issue in consequence thereof; and that in one case the leasing company has been required by said department to submit to the Mexican Government evidence of payment of rental and royalties and to couch its protest in the terms stipulated by the decree of August 8, 1918.

The department is of the opinion that in these requirements an attempt is being made to coerce American companies by the Mexican Government into the performance of acts, the results of which would be to admit in advance of the final settlement of the questions at issue, the correctness of the contention of the Mexican Government in the matter of ownership of oil deposits, against which the American Government has made solemn protest as threatening confiscation of rights legally acquired by American citizens.

POLK, *Acting.*

No. 2063. Mexico City, June 3, 1919.

The Secretary of State,
Washington.

Sir: With reference to the department's telegrams No. 1921 of March 18, 6 p. m., and No. 1969 of April 16, 5 p. m., instructing the embassy to protest against the circular issued by the department of hacienda on February 19, 1919, in regard to the proposed collection of royalties from petroleum companies and against the possibility that denounced concessions might be granted to third persons, I have the honor to forward herewith copy and translation of a note received from the foreign office dated May 29, 1919, the substance of which was sent the department in the embassy's telegram No. 3006, June 2, 3 p. m.

I have the honor to be, sir,

Your obedient servant,

GEORGE T. SUMMERLIN,
Chargé d'Affaires.

(*Inclosure No.* 1, *Dispatch No.* 2063)

(*Ernesto Garza Perez, Acting Secretary of State for Foreign Affairs, to George T. Summerlin, Chargé d'Affaires, Mexico*)

(*Translation*)

1691. Mexico, May 29, 1919.

Mr. Chargé d'Affaires:

I have the honor to acknowledge receipt of your notes dated March 20 and April 21 of the current year which you were good enough to send this department; in accordance with instructions from your Government, protesting against the circular issued by the department of hacienda on the 19th of February last, in connection with the collection of royalties from the petroleum companies and against the possibility that concessions might be granted to third persons who have denounced petroleum properties rented by American companies.

The Government of Mexico sincerely deplores the fact that the American companies have ill advisedly failed to comply with the laws which the former issued on the exploitation of petroleum, since they could have done so under protest and with the reservations that they might have considered compatible with their interests, and could have appeared before the proper authorities, requesting a detailed study of the question so that it might be decided in justice and according to law.

Consequently, if the situation of the petroleum companies is complicated by the denouncements made by third persons, the companies mentioned are doubtless the only ones to blame, since it must be evident to your clear judgment that the protests of a foreign nation can not suspend the effects of the laws issued by the Government of another nation.

I renew to you the assurances of my highest consideration.

E. GARZA PEREZ.

Department of State,
Washington, June 16, 1919.

American Embassy,
Mexico City.

Your 3006, June 2, 3 p. m.

Reply to note of foreign office substantially as folows:

"As the Government of the United States is informed and believes the only Mexican legislation on the subject of petroleum deposits with which American companies have failed to comply is the recent legislation covered by decree of February 19, 1918, and subsequent decrees on the same subject, compliance with which would constitute an admis-

sion of the correctness of the contention of the Mexican Government in the matter of ownership of oil deposits, against which the Government of the United States has made solemn protest which it now renews, as threatening confiscation of rights legally acquired by American citizens.

"When it asserted that the American companies in question could have complied with such legislation under protest and with the reservations that they might have considered compatible with their interests, the foreign office apparently failed to take into account the language used by the Government of Mexico in its reply, understood by the Government of the United States to bear date of August 25, 1918, to the contention of the petroleum companies and interested individuals in the case of the amparos demanded against the recent decrees of the Mexican Government.

"Therein, as a further ground for the contention of the Mexican Government that amparo was not in order, that Government referred to the quote constitutional doctrines unquote to the effect that when an individual has agreed to be governed as regards his property by a certain statute, he may not later raise the objection that said statute violates the constitutional precepts. In this connection the reply of the executive branch of the Mexican Government sets forth that some manifestations had been presented quote under protest unquote, but that quote such protest has no legal effect except in the cases precisely specified in the laws."

In view of the foregoing the Government of the United States can not admit that American companies are in any wise blamable for the complication of their situation by reason of denouncements made by third persons, and must reiterate its previous statement that it would regard it as very unfortunate were the Mexican Government, pending a final solution of its difficulties with the petroleum interests, to issue to their persons titles to, or rights in, lands legally held by American citizens.

PHILLIPS, Acting.

IV.

Representations against refusal to grant drilling permits.

(*Translation*)

Minister of Industry and Commerce,
Mexico, June 28, 1917.

Mr. Ambassador:

I have the honor to reply to your excellency's esteemed letter of the 22d instant, in which you are pleased to inform me that the Department of State of the United States of America, which has been informed that the officials of our Government decline to grant permission to companies to sink wells acquired under leases entered into since the 5th of February of this year, wishes to know the legal status of the said petroleum companies.

It is true that on the 24th instant the department of petroleum of this ministry issued to petroleum agencies, a telegraphic order prohibiting, until further notice, the issuance of permits for the sinking of petroleum wells, on lands leased on dates subsequent to the 5th of February, on which date the new Federal Constitution was promulgated. According to the text of article 27 in relation to the first of the transitory articles of our fundamental law, the direct control of petroleum and of all hydrocarbons corresponds to the nation as from the 1st of May. Leases, or contracts of whatever nature relating to the exploitation of these mineral products, entered into on dates prior to the promulgation of the Constitution are presumed to have been made in good faith; but not those which were made subsequent to that date, because the subsoil from which the products are to be secured, and which is the basis of such contracts, does not belong, according to the said law, to the owner of the surface lands, by virtue of the nationalization imposed by the text referred to.

The prohibition declared is, therefore, but a part of the measures taken covering the constitutional text for the purpose of making the same effective.

I renew to your excellency the assurances of my consideration and personal esteem.

A. J. PANI.

Mexico, July 9, 1917.

The Secretary of State,
Washington.

Sir: With reference to the department's telegram No. 267, June 16, 3 p. m., relative to the refusal on the part of officials of the Mexican Government to grant permits to oil companies to drill wells acquired under leases of dates subsequent to February 5, 1917, I have the honor to inclose herewith copies and translations of my note verbale of June 22 to the minister of industry and commerce on the subject, and of his reply of June 28. I have the honor to be, sir,

Your obedient servant,

GEORGE T. SUMMERLIN,
Chargé d'Affaires.

(*Translation*)

The ambassador of the United States of America presents his compliments to his excellency, the secretary of industry and commerce, and has the honor to state that he has received a telegram from the Department of State of the United States in which he is informed that according to information which has been received, the officials of the Mexican Government decline to grant permission to petroleum companies to sink wells acquired under leases entered into since the 5th of February of the present year, on which date the new Constitution was promulgated. It is said that various American companies acquired rights for the sinking of wells during the period between the 5th of February and the 1st of May based on statements of the Mexican Government that the new Constitution would not go into effect prior to the 1st of May.

In view of the above, the ambassador, under instructions from his government, requests his excellency, the secretary of industry and commerce, to kindly inform him in the premises, for which he anticipates his thanks.

Mr. Fletcher avails himself of this opportunity to renew to his excellency, Mr. Alberto J. Pani, the assurances of his high and distinguished consideration.

Mexico, June 22, 1917.

(*Cable Message from the Department of State to the American Embassy at Mexico City. No. 716, Paraphrase*)

January 23, 1918.

Department of State has information that as a result of views of attorney general and attorneys retained by different Mexican Secretaries of State alien corporations cannot exploit in any manner, under article 27 of the Constitution the natural resources of the country and that American companies have lately been denied permission to sink oil wells on lands owned by them regardless of the fact that such permission was invariably granted them previously.

See proper authorities and insist that no such action as that be taken pending the discussion and enactment of new legislation on the subject inasmuch as this action will entail serious consequences to the oil companies and precipitate a crisis in their affairs. You will also call attention to President Carranza's assurance made to ambassador on August 2, 1917, and reported in embassy's telegram 3511 August 2, 7 P. M., to the effect that the Mexican government did not intend to absorb the American oil and mining interests under development and that none of these would be confiscated. Remind authorities that present attitude of administrative officials seems to violate the spirit of those assurances and cable at once result of your protest.

POLK, *Acting.*

(*Cable Message from American Embassy at Mexico City to the Department of State. No. 725. Paraphrase*)

January 27, 1918.

Your No. 716, January 23, 7 p. m., discussed with Pani, who answers in a memorandum of the 26th that alien corporations have not been prevented from sinking oil wells; that the views of the attorney general and lawyers consulted regarding article 27 does not prevent foreign capital from being invested in the oil business but demands that foreign capital shall submit to the new laws by waiving its nationality and organizing as Mexican corporations; that this does not mean meddling in the affairs of said companies, nor imply confiscation of their properties; that the position assumed by the present Government in its relations with foreign interests has accorded with the assurances given to Ambassador Fletcher by President Carranza, on August 2 last. Moreover, that since the new Constitution was enacted, the Government has adopted a friendly attitude toward American interests by giving them a chance to adjust their affairs to the conditions which the new law creates, and that any specific complaint which may arise wherein an American company may feel that its interests are endangered will be given careful attention when brought to the attention of his department.

SUMMERLIN.

(*Cable Message from the Department of State to the American Embassy at Mexico City*)

June 18, 1919.

No. 2052.

(*Paraphrase*)

Answering your No. 3025, June 16, 6 p. m.

You will please make prompt protest, on behalf of American citizens whose interests are involved, against orders of President Carranza to cease drilling for oil except in cases where permits have been granted. Protest should be based on the fact that said permits could have been procured only through complying with recent legislation in consonance with presidential decree of February 19, 1918, and later decrees regarding same subject, and that acquiesence in same would have been equivalent to an admission that the Mexican Government had in issuing them acted within its rights in regard to ownership of oil deposits, against which assumption the Government of the United States has entered a vigorous protest as threatening to confiscate rights which its citizens have legally acquired.

You will simultaneously make reservation of rights for damages in behalf of American citizens whose interests are jeopardized by said decrees.

POLK, *Acting*.

No. 2241. Mexico, August 6, 1919.

The Secretary of State,
Washington.

Sir: I have the honor to confirm this embassy's telegram, No. 3097, of August 5, 12 noon, and to inclose, herewith, copy and translation of the official circular No. 9 of the petroleum division of the department of industry, commerce, and labor, dated August 1, 1919, which was forwarded to this embassy by the department of foreign relations, August 5, 1919.

I have the honor to be, sir,
Your obedient servant,

GEORGE T. SUMMERLIN,
Chargé d'Affaires.

(*Inclosure No. 1, Dispatch No. 2241*)

(*Translation of Official Circular No. 9, Issued by the Petroleum Division of the Department of Industry, Commerce, and Labor, August 1, 1919, Forwarded to Embassy by Department of Foreign Relations*)

A seal which reads: "Department of industry, commerce, and labor. Petroleum Division. Circular No. 9."

Taking into consideration that various companies and individuals interested in the petroleum industry have not understood the liberal spirit which animated the Federal executive when he issued the decrees regarding taxes on oil lands and on oil contracts, nor have they understood the advantage which was intended for them by the presentation of the manifestations required by the decree of July 31, 1918, order whose object was the protection of rights acquired prior to May 1, 1917, and consequently did not present said manifestations:

That as a consequence of the failure to present the manifestations required the interested parties were deprived, by article 4 of the decree of August 12, 1918, of the right to execute new work in connection with the exploration and exploitation of oil on their owned or leased properties;

That for the same reason they can not fulfill their commercial promises previously contracted according to persistent declarations which they have made to the department of industry, commerce, and labor; and

That the inclination of the Federal Government always has been to encourage the development of the national petroleum industry:

The President of the Republic has seen fit to order that:

The owners of lands or the concessionaries of the right of exploitation who did not present the manifestations required by the decree of July 31, 1918, on taxes on oil lands and oil contracts, shall be able in the future to undertake oil exploration and exploitation work on the condition that on requesting the corresponding permission from the Federal Executive they obligate themselves to respect the precepts of the organic petroleum law which the Congress of the Union may enact.

The permits granted by this department in fulfillment of the above ruling shall have a provisional character and shall be revalidated in accordance with the organic law on petroleum when it may be passed.

In order to obtain the referred-to permits for exploration and exploitation, the petitioners shall present to this department of industry, commerce, and labor, the documents which prove the possession of the lands where the referred-to permits are to be used.

Which is made known to the interested parties for proper action. Constitution and reforms. Mexico, August 1, 1919. The subsecretary in charge of the office.

LEON SALINAS.

This is a true copy of the original.

A. G. MORENA.

(*Paraphrase of Telegram, dated October* 1, 1919, *from the Acting Secretary of State to the American Embassy at Mexico City*)

You will inform the foreign office substantially as follows:

The United States Government has learned that various corporations owned entirely or in large part by citizens of the United States hold oil leases executed before May 1, 1917, on privately owned lands in the State of Vera Cruz, by which the companies have the right to explore and exploit the subsoil deposits; that in some instances these lease contracts definitely required under penalty of forfeiture the drilling of wells within fixed and limited periods; that the companies in order to meet their contractual obligations and to enjoy their property rights have applied in the appropriate manner to the Mexican department of industry, commerce and labor for permits to drill wells; that such permits have been denied in some instances and granted conditionally in other instances; that denials have been based on sole ground that companies have not manifested their properties as required by Mexican decree of July 31, 1918, and have not conformed to decrees of August 8 and 12, 1918, and that permits granted have been conditioned upon obligation of companies to conform to provisions of a petroleum law to be enacted in the future; that the companies have been notified that under the provisions of the Mexican circular of January 7, 1915, as reaffirmed March 20, 1919, the Government will take over all wells drilled without permits, and that on certain properties so held under leases the Mexican authorities have accepted denouncements by third persons in spite of companies' protests, which have been overruled because companies have not complied with provisions of decrees of August 8 and 12, 1918.

This would seem to be but another aspect of the situation affecting petroleum deposits in Mexico, which has been discussed in previous representations from the Government of the United States, and this opportunity is taken to reaffirm the position of this Government with regard to the matter as set forth in such representations.

In this relation, and with specific reference to the action of the Mexican Government as set forth in the foregoing, it may be observed that compliance with or acquiescence in the above-mentioned decrees of 1918 by the companies affected would seem clearly to imply a surrender on their part of rights and titles lawfully acquired and legitimately held under Mexican law. Moreover, the companies in question can not reasonably be expected to agree in advance to conform to the provisions of a law to be enacted in the future, concerning the terms of which they have no assurance that their rights will be respected.

In this view of the matter the Government of the United States, owing as it does to its citizens the duty of protecting them in foreign lands, both in their persons and their property rights, must strongly protest against the action of the Mexican Government as outlined above and characterize it as threatening confiscation and a denial of justice.

The Mexican Government is therefore strongly urged not to permit the circulars of January 7, 1915, and March 20, 1919, to be enforced in the cases to which reference has been made and to see to it that the interested companies suffer no loss or inconvenience on account of the denouncements upon their properties which appear to have been accepted as aforesaid, but to restore the companies to all the rights to which they are entitled under the leases held by them and the applicable laws of Mexico at the time when such lease contracts were made.

In communicating the foregoing the Government of the United States takes occasion to express the confident hope that pending the general settlement of the petroleum question by specific legislation of the Mexican Congress the administrative authorities of Mexico will respect the vested rights of American citizens and evince that respect by withdrawing its insistence that interested American ctizens comply with the provisions of the decrees mentioned.

CHRONOLOGY OF EVENTS

(Italics indicate assurances of Mexican Government.)

June 11, 1915. Carranza's Proclamation. *"First, the Constitutionalist government shall afford to foreigners residing in Mexico all the guaranties to which they are entitled . . . and shall amply protect their lives, their freedom and the enjoyment of their rights of property."*

Oct. 7, 1915. Note from Ambassador Designate Arredondo to Robert Lansing, Secretary of State, giving the following assurance: *"The Government he (Venustiano Carranza) represents in its capacity of a political entity, conscious of its international obligations . . . has afforded guaranties to the nationals and has done likewise to foreigners, and shall continue to see that their lives and property are respected in accordance with the practices established by civilized nations."*

Oct. 19, 1915. De facto recognition based on above, among other assurances, accorded to Carranza faction by the United States.

Jan. 19, 1916. State Department to Silliman to protest against possible effects of nationalization of petroleum.

Jan. 21, 1916. *Assurance of Mexican Government that no such decree was contemplated.*

Jan. 26, 1916. *Renewed assurance of First Chief Carranza to same effect.*

Feb. 17, 1916. Communication from Secretary of State Lansing to the United States Senate informing the Senate of Carranza's proclamation of June 11, 1915, and of receipt of Arredondo's letter of Oct. 7, 1915, in reply to request for information as to assurances precedent and leading to de facto recognition.

Aug. 10, 1916. Ruling by First Chief Carranza requiring foreign stockholders of new companies to waive diplomatic protection.

Aug. 15, 1916. Decree extending same requirement to aliens acquiring real property.

Aug. 16, 1916. Protest of State Department against both measures.

Dec. 15, 1916. Confirmation of Decree of August 15, 1916.

Jan. 19, 1917. Renewed protest of State Department against decrees of August 15, and December 15, 1916.

Jan. 22, 1917. State Department protest against Articles 27 and 33, as submitted to Constitutional Convention.

Feb. 20, 1917. *Mexican Minister of Foreign Affairs assured Fletcher that a constitutional article would prevent confiscation.*

Feb. 20, 1917. Thereupon Fletcher presented his credentials.

May 1, 1917. Mexican Constitution declaring oil deposits to belong to Mexican nation becomes effective.

Aug. 2, 1917. Fletcher cabled Department of State that *Carranza assures United States that no legislation of his government would "absorb" oil or mining properties being developed by Americans in Mexico.*

Jan. 23, 1918.	Protest by United States against refusal by Mexican Government to grant drilling permits to American companies.
Jan. 27, 1918.	Reply by Mexican Government demanding that companies waive nationality.
Feb. 19, 1918.	Decree requiring "manifests" and payment of rentals and royalties.
Apr. 2, 1918.	United States note to Mexico, protesting against decree of February 19th.
Apr. 4, 1918.	Renewed protest by United States against decree of February 19, 1918, as threatening confiscation.
May 18, 1918.	Decree extending time for "manifests" to July 31st.
Jul. 31, 1918.	Decree based on that of February 19th, further extending to August 15th date for presentation of "manifests."
Aug. 8, 1918.	Decree regulating decree of July 31st.
Aug. 12, 1918.	Attention of Mexican Government called to fact that its note of April 2 is still unanswered.
Aug. 12, 1918.	Presentation of request by American Government for extension of time to present "manifests." Protest of April 2nd renewed.
Aug. 12, 1918.	Decree based on that of July 31, 1918, issued.
Aug. 13, 1918.	Mexican Government refused request of American Government for extension.
Aug. 17, 1918.	Mexico's reply to United States' note of April 2.
Nov. 22, 1918.	Executive Bill "regulating" Article 27 presented to Mexican Congress.
Dec. 26, 1918.	United States rejoinder to Mexican reply of August 17th.
Dec. 28, 1918.*	Note of American Government to Mexican Government that decrees, if enacted into law or confirmed by Congress, would meet same protest as existed against them as Executive decrees.
Dec. 31, 1918.	Decrees confirmed as laws by Mexican Congress.
March 18, 1919.	United States protests against collection of royalties.
March 20, 1919.	Circular of Mexican Government ordering confiscation of wells and destruction of work if drilling permits have not been obtained.
April 16, 1919.	United States protests against granting rights in American-owned or leased oilfields in Mexico to third persons under "denouncement," as also to issuance of "titles to, or rights in, lands legally held by American citizens."
May 29, 1919.	Reply of Mexican Government to notes stating American companies should have "manifested" under protest to save properties from "denouncement."

*Text not published.

June 16, 1919. Instructions by United States Government to rejoin to above, telling Mexican Government it itself had stated in reply to "Amparos" of oil companies that protest was nugatory and that the act of acquiescence in a law estops the plaintiff from questioning its validity. "The United States cannot admit that American companies are in any way blamable" for the situation complained of.

June 18, 1919. Instructions to Summerlin to protest against refusal of drilling permits or stoppage of work on properties, owned by American companies, as acquiesence in permit regulations would be equivalent to admission of ownership of oil deposits in the Mexican nation.

Aug. 1, 1919. Circular No. 9, requiring companies to accept petroleum legislation in advance before being granted drilling permits.

Oct. 1, 1919. Instructions sent to Summerlin to inform the Mexican Government that the United States objects to application of terms of Decrees of January 7, 1915, and March 20, 1919, which provide for confiscation of wells drilled without permits.

Nov. 12, 1919. Stoppage by Mexican federal military forces of all wells being drilled by American companies, which had, in harmony with the State Department's attitude, and with its knowledge, refused to acquiesce in confiscation of their properties.

Nov. 19, 1919. Refusal, by order of President Carranza, to permit American companies to take oil from wells already drilled without permit.

Dec. 8, 1919. Petroleum bill (see Nov. 22, 1918) passed by Mexican Senate (XXVIIIth Congress).

Jan. 20, 1920. Circular granting provisional drilling permits without relinquishment of rights by oil companies or abandonment of Mexican Government's positon.

March 12, 1920 Decree on Federal Zone.

April 21, 1920. Regulations on Federal Zone Decree.

Aug. 13, 1920 }
Aug. 14, 1920 } *Instructions to Summerlin to make representations without involving recognition on:
(1) Continued "denouncements";
(2) Federal Zone Decree.

*New York Times, September 9, 1920. Text not made public.

Gaylord Bros.
Makers
Syracuse, N. Y.
PAT. JAN. 21, 1908